

State of North-Carolina. In convention, August 1, 1788

State of North-Carolina. ***IN CONVENTION, AUGUST 1, 1788.***

THE Order of the Day for taking up the Report of the Committee of the whole Convention, on the proposed Constitution for the Government of the United States of America, was called for and read:

Whereupon the said report was taken up and read in the following words.

Resolved, That a Declaration of Rights, asserting and securing from incroachment the great Principles of civil and religious Liberty, and the unalienable Rights of the People, together with Amendments to the most ambiguous and exceptionable Parts of the said Constitution of Government, ought to be laid before Congress, and the Convention of the States that shall or may be called for the Purpose of Amending the said Constitution, for their consideration, previous to the Ratification of the Constitution aforesaid, on the part of the State of North Carolina.

DECLARATION OF RIGHTS

1st. That there are certain natural rights of which men, when they form a social compact, cannot deprive or divest their posterity, among which are the enjoyment of life, and liberty, with the means of acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety.

2d. That all power is naturally vested in, and consequently derived from the people; that magistrates therefore are their trustees, and agents, and at all times amenable to them.

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3d. That Government ought to be instituted for the common benefit, protection and security of the people; and that the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and destructive to the good and happiness of mankind.

4th. That no man or set of men are entitled to exclusive or separate public emoluments or privileges from the community, but in consideration of public services; which not being descendible, neither ought the offices of magistrate, legislator or judge, or any other public office to be hereditary.

5th. That the legislative, executive and judiciary powers of government should be separate and distinct, and that the members of the two first may be restrained from oppression by feeling and participating the public burthens, they should at fixed periods be reduced to a private station, return into the mass of the people; and the vacancies be supplied by certain and regular elections; in which all or any part of the former members to be eligible or ineligible, ad the rules of the Constitution of Government, and the laws shall direct.

6th. That elections of Representatives in the legislature ought to be free and frequent, and all men having sufficient evidence of permanent common interest with, and attachment to the community, ought to have the right of suffrage: and no aid, charge, tax or fee can be set, rated, or levied upon the people without their own consent, or that of their representative, so elected, nor can they be bound by any law, to which they have not in like manner assented for the public good.

7th. That all power of suspending laws, or the execution of laws by any authority without the consent of the representatives, of the people in the Legislature, is injurious to their rights, and ought not to be exercised.

8th. That in all capital and criminal prosecutions, a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence and be allowed counsel in his favor, and to a fair and speedy trial by an impartial

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jury of his vicinage, without whose unanimous consent he cannot be found guilty (except in the government of the land and naval forces) nor can he be compelled to give evidence against himself.

9th. That no freeman ought to be taken, imprisoned, or disseized of his freehold, liberties, privileges or franchises, or outlawed or exiled, or in any manner destroyed or deprived of his life, liberty, or property but by the law of the land.

10th. That every freeman restrained of his liberty is entitled to a remedy to enquire into the lawfulness thereof, and to remove the same, if unlawful, and that such remedy ought not to be denied nor delayed.

11th. That in controversies respecting property, and in suits between man and man, the ancient trial by jury is one of the greatest securities to the rights of the people, and ought to remain sacred and inviolable.

12th. That every freeman ought to find a certain remedy by recourse to the laws for all injuries and wrongs he may receive in his person, property, or character. He ought to obtain right and justice freely without sale, completely and without denial, promptly and without delay, and that all establishments, or regulations contravening these rights, are oppressive and unjust.

13th. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted,

14. That every freeman has a right to be secure from all unreasonable searches, and seizures of his person, his papers, and property: all warrants therefore to search suspected places, or seize any freeman, his papers or property, without information upon oath (or affirmation of a person religiously scrupulous of taking an oath) of legal and sufficient cause, are grievous and oppressive, and all general warrants to search

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suspected places, or to apprehend any suspected person without specially naming or describing the place or person, are dangerous and ought no to be granted.

15th. That the people have a right peaceably to assemble together to consult for the common good, or to instruct their representatives; and that every freeman has a right to petition or apply to the Legislature for redress of grievances.

16th. That the people have a right to freedom of speech, and of writing and publishing their sentiments; that the freedom of the press is one of the greatest bulwarks of Liberty, and ought no to be violated.

17th. That the people have a right to keep and bear arms; that a well regulated militia composed of the body of the people, trained to arms, is the proper, natural and safe defense of a free state. That standing armies in time of peace are dangerous to Liberty, and therefore ought to be avoided, as far as the circumstances and protection of the community will admit; and that in all cases, the military should be under strict subordination to, and governed by the civil power.

18th. That no soldier in time of peace ought to be quartered in any house without the consent of the owner, and in time of war in such manner only as the Laws direct.

19th. That any person religiously scrupulous of bearing arms ought to be exempted upon payment of an equivalent to employ another to bears arms in his stead.

10. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence, and therefore all men have an equal, natural and unalienable right to the free exercise of religion according to the dictates of conscience, and that no particular religious sect or society ought to be favoured or established by law in preference to others.

Amendments to the Constitution.

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I. **THAT** each state in the union shall, respectively, retain every power, jurisdiction and right, which is not by this constitution delegated to the Congress of the United States, or to the departments of the [Federal Government. ?]

II. That there shall be one representative for every 30 [?], according to the enumeration or census, mentioned in the constitution, until the whole number of representative amounts to two hundred; after which, that number shall be continued or increased, as Congress shall direct, upon the principles fixed in the constitution, by apportioning the representatives of each state to some greater number of people from time to time, as population encreases.

III. When Congress shall lay direct taxes or excises, they shall immediately inform the executive power of each state, of the quota of such state, according to the census herein directed, which is proposed to be thereby raised: And if the legislature of any state shall pass a law, which shall be effectual for raising such quota at the time required by Congress, the taxes and excises laid by Congress shall not be collected in such state.

IV. That the members of the senate and house of representatives shall be ineligible to, and incapable of holding any civil office under the authority of the United States, during the time for which they shall, respectively, be elected.

V. That the journals of the proceedings of the senate and house of representative shall be published at least once in every year, except such parts thereof relating to treaties, alliances, or military operations, as in their judgment require secrecy.

VI. That a regular statement and account of the receipts and expenditures of the public money shall be published at least once in every year.

VII. That no commercial treaty shall be ratified without the concurrence of two-thirds of the whole number of the members of the senate: And no treaty, ceding, contracting, or restraining or suspending the territorial rights or claims of the United States, or any of them or their, or any of their rights or claims to fishing in the American seas, or navigating the

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American rivers shall be made, but in cases of the most urgent and extreme necessity; nor shall any such treaty be ratified without the concurrence of three fourths of the whole number of the members of both houses respectively.

VIII. That no navigation law, or law regulating commerce shall be passed without the consent of two-thirds of the members present in both houses.

IX. That no standing army or regular troops shall be raised or kept up in time of peace, without the consent of two thirds of the members present in both houses.

X. That no soldier shall be inlisted for any longer term than four years, except in time of war, and then for no longer term than the continuance of the war.

XI. That each state, respectively, shall have the power to provide for organizing, arming and disciplining its own militia whensoever Congress shall omit or neglect to provide for the same. That the militia shall not be subject to martial law, except when in actual service in time of war, invasion or rebellion: And when not in the actual service of the United States, shall be subject only to such fines, penalties, and punishments as shall be directed or inflicted by the laws of its own state.

XII. That Congress shall not declare any state to be in rebellion without the consent of at least two-thirds of all the members present of both houses.

XIII. That the exclusive power of Legislation given to Congress over the federal town and its adjacent district, and other places, purchased or to be purchased by Congress, of any of the states, shall extend only to such regulations as respect the police and good government thereof.

XIV. That no person shall be capable of being president of the United States for more than eight years in any term of sixteen years.

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XV. That the judicial power of the United States shall be vested in one supreme court, and in such courts of admiralty as Congress may from time to time ordain and establish in any of the different states. The judicial power shall extend to all cases in law and equity, arising under treaties made, or which shall be made under the authority of the United States; to all cases affecting ambassadors, other foreign ministers and consuls; to all cases of admiralty; and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, and between parties claiming lands under the grants of different states. In all cases affecting ambassadors, other foreign ministers and consuls, and those in which a state shall be a party; the supreme court shall have original jurisdiction, in all other cases before mentioned; the supreme court shall have appellate jurisdiction as to matters of law only, except in cases of equity, and of admiralty and maritime jurisdiction, in which the supreme court shall have appellate jurisdiction both as to law and fact, with such exceptions, and under such regulations as the Congress shall make. But the judicial power of the United States shall extend to no case where the cause of action shall have originated before the ratification of this constitution, except in disputes between states about their territory; disputes between persons claiming lands under the grants of different states, and suits for debts due to the united states.

XVI. That in criminal prosecutions, no man shall be restrained in the exercise of the usual and accustomed right of challenging or excepting to the jury.

XVII. That Congress shall not alter, modify, or interfere in the times, places, or manner of holding elections for senators and representatives, or either of them, except when the legislature of any state shall neglect, refuse or be disabled by invasion or rebellion, to prescribe the same.

XVIII. That those clauses which declare that Congress shall not exercise certain powers, be not interpreted in any manner whatsoever to extend the powers of Congress; but that

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they be construed either as making exceptions to the specified powers where this shall be the case, or otherwise, as inserted merely for greater caution.

XIX. That the laws ascertaining the compensation of senators and representatives for their services be postponed in their operation, until after the election of representatives immediately succeeding the passing thereof, that excepted, which shall first be passed on the subject.

XX. That some tribunal, other than the senate, be provided for trying impeachments of senators.

XXI. That the salary of a judge shall not be increased or diminished during his continuance in office, otherwise than by general regulations of salary which may take place, on a revision of the subject as stated periods of not less than seven years, to commence from the time such salaries shall be first ascertained by Congress.

XXII. That Congress erect no company of merchants with exclusive advantages of commerce.

XXIII. That no treaties which shall be directly opposed to the existing laws of the United States in Congress assembled, shall be valid until such laws shall be repealed, or made conformable to such treaty; nor shall any treaty be valid which is contradictory to the constitution of the United States.

XXIV. That the latter part of the fifth paragraph of the 9th section of the first article be altered to read thus, —Nor shall vessels bound to a particular state be obliged to enter or pay duties in any other; nor when bound from any one of the States be obliged to clear in another.

XXV. That Congress shall not directly or indirectly, either by themselves or thro' the judiciary, interfere with any one of the states in the redemption of paper money already

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emitted and now in circulation, or in liquidating and discharging the public securities of any one of the states: But each and every state shall have the exclusive right of making such laws and regulations for the above purposes as they shall think proper.

XXVI. That Congress shall not introduce foreign troops into the United States without the consent of two-thirds of the members present of both houses. **MR.** Iredell seconded by Mr. John Skinner moved, that this report be amended, by striking out all the words of the said report, except the two first, viz. "Resolved that", And that the following words be inserted in their room, viz.

This Convention having fully deliberated on the constitution, proposed for the future Government of the United States of America, by the Federal Convention lately held at Philadelphia, on the seventeenth day of September last, and having taken into their serious and solemn consideration the present critical situation of America, which induces them to be of opinion, that though certain amendments to the said constitution may be wished for, yet that those amendments should be proposed subsequent to the ratification on the part of this state, and not previous to it: They do therefore, on behalf of the state of North Carolina, and the good people thereof, and by virtue of the authority to there delegated, ratify the said constitution on the part of this state. And they do at the same time recommend, that as early as possible, the following amendments to the said constitution may be proposed for the consideration and adoption of the several states in the union, in one of the modes prescribed by the fifth article thereof.

AMENDMENTS.

I. **Each** state in the union shall, respectively, retain every power, jurisdiction and right, which is not by this constitution delegated to the Congress of the United States, or to the departments of the General Government; nor shall the said Congress, or any department of the said government's exercise any act of authority over any individual in any of the said states, but such as can be justified under some power, particularly given in this

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constitution; but the said constitution shall be considered at all times a solemn instrument, defining the extent of their authority, and the limits of which they cannot rightfully in any instance exceed.

II. There shall be one representative for every thirty thousand; according to the enumeration, or census mentioned in the constitution, until the whole number of representatives amounts to two hundred; after which that number shall be continued or increased as Congress shall direct, upon the principles fixed in the constitution, by apportioning the representatives of each state to some greater number of people, from time to time, as population increases.

III. Each state, respectively, shall have the power to provide for organizing, arming, and disciplining its own militia, whensoever Congress shall omit or neglect to provide for the same. The militia shall not be subject to martial law, except when in actual service in time of war, invasion, or rebellion; and when they are not in the actual service of the United States, they shall be subject only to such fines, penalties, and punishments as shall be directed or inflicted by the laws of its own state.

IV. The Congress shall not alter, modify, or interfere in the times, places, or manner of holding election for senators and representatives, or either of them, except when the legislature of any state shall neglect, refuse or be disabled by invasion, or rebellion, to prescribe the same.

V. The laws ascertaining the compensation of senators and representatives for their services, shall be postponed in their operation, until after the election of representatives immediately succeeding the passing thereof that excepted, which shall first be passed on the subject.

VI. Instead of the following words in the 9th section of the first article, viz. Nor shall vessels bound to or from one state, be obliged to enter, clear or pay duties in another. (The meaning of which is, by many deemed not sufficiently explicit) It is proposed, that the

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following shall be substituted: "No vessel bound to one state shall be obliged to enter or pay duties to which such vessel may be liable at any port of entry, in any other state than that to which such vessel is bound: Nor shall any vessel bound from one state be obliged to clear or pay duties to which such vessel may be liable at any port of clearance, in any other state than that from which such vessel is bound.

This motion made by Mr. Iredell being objected to, the questions was put, "Will the Convention adopt that amendment or not?" and it was negatived: Whereupon the yeas and nays were required by Mr. Iredell, seconded by Mr. Steele, and were Yeas⁸⁴—Nays¹⁸².—The yeas on this question are nays upon the concurrence, and the nays, yeas, except Mr. A. Neale, who voted on this question in favour of the amendment, but did not vote on the concurrence, owing to indisposition.*

*See the votes the concurrence Saturday, August 2d. Ordered, That the further consideration of the report of the Committee of the whole Convention be postponed until tomorrow.

SATURDAY, August 2, 1788.

THE report of the committee of the whole Convention, according to order was taken up and read in the same words as on yesterday, when it was moved by Mr. T. Person, and seconded by Mr. Macon, that the Convention do concur therewith, which was objected to by Mr. A. Maclaine. The question being put, will the Convention concur with the report of the Committee of the whole Convention or not? it was carried in the affirmative. Whereupon Mr. [?] called for the yeas and nays, and was seconded by Mr. Cabarrus, which are as follow.

Yeas. Messrs. Willie Jones, Sam [Spencer?], Lewis Lanier, Thos. Wade, Can Gould, Jas. Bonner, A. M. Forker, Lewis Dupree, Thos. Brown, James [?], Jos. McDowal, Rober Miller, Benj. Williams, Richard Nixon, Thomas Armstrong, Alex. McAllister, Robert Dickins, George Roberts, John Womack, Ambrose Ramsey, James Anderson, Jos. Stewart,

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Wm Westal, Thomas Evans, Thomas Hardiman, Robert Weakley, Wm. Donelson, Wm. Dobins, R. Digs, [?] Bell, Elisha Battle, Wm. Fort, Etheld. Gray, Wm. Lancaster, Thos. Sherrod, John Norwood, Sterling Dupe, Robert Williams, Richard Moyer, Arthur Forbes, David Caldwell, Wm. Goudy, Daniel Gillespie, John [Anderson?], John Hamilton, Thomas Person, Joseph Taylor, Thornton Yancey, Howell Lewis, junr. Elijah [Mitchell?], George Moore, George Ledbetter, Wm. Porter, Zebedee Wood, Edmund Waddell, James [?], John Regan, Joseph Winston, James Gains, Charles McAnnelly, Absalom Bostick, John Scott, [John?] Dunkin, David Dodd, Curtis Ivey, Lewis Holmes, Richard Clinton, Hardy Holmes, Robert [?], James Stewart, John Tipton, John Macon, Thomas Christmas, Henry Montfort, Wm. Taylor, James [?], Britain Saunders, Wm. Lenoir, Richard Allen, John Brown, Jos. Herndon, Jas. Fletcher, A. Tatom, Burkit, W. Little, Thos. King, N. Bryan, J. H. Bryan, E. Whitty, R. Alexander, James Johaston, J. Cox, John [?], Corn. Doud, Thos. Tyson, Wm. Martin, Thomas Hunter, M. Jos. Graham, W. Lostin, Wm. Kindal, T. Ussery, Thos. Butler, John Benford, Jas. Vaughan, Rob. Peebles, Jas. Vinson, Wm. S. Marns, H. Allen, [?] Bunn, John Bonds, David Pridgen, Daniel Yates, Thos. Johnston, John Spicer, Alexr. Mebane, Mm. [?], Wm. McCauley, Wm. Shepperd, Orange, Jonathan Linley, Wyatt Hawkins, James Payne, John Graves, [John?] Blair, Jos. Tipton, Wm. Bethell, Abraham Phillips, John May, Charles Galloway, Jas. Boswell, John [M'Callister?], David Looney, John Sharpe, Jos. Gaitier, John A. Campbell, John Pugh Williams, Wm. Marshal, Charles Robertson, James Gillespie, Charles Ward, Wm. Randal, Frederick Harget, Richard McKinnie, John Cain, Jacob Leonard, Thomas Carson, Richard Singleton, James Whiteside, Caleb Phifer, Zachias Wilson, Jos. Douglas, Thomas Dougan, James Kenan, John Jones, Egbert Haywood, Wm. Wootten, John Branch, Henry Hill, Andrew Bass, Joseph Boon, Wm. Farmer, John Bryan, Edward Williams, Francis Oliver, Mathew Brooks, Griffith Rutherford, George H. Barringer, Timothy Bloodworth, Everet Pierce, Asahel Rawlings, James Wilson, James Reddy, Sam Cain, Benj. Covington, Jos. McDowal, junr. Durham Hall, James Bloodworth, Joel Lane, James Hinton, Thos. Devane, James Brandon, Wm. Dickson, Burwell Mooring, Mathew Lock, and Stokely Donelson.

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Nays.—His excellency Sam Johnston, esq; President, Mess. James Iredell, Arch. Maclaine, Nathan Keals, John G. Blount, Thos. Alderson, John Johnston, And. Oliver, Goodwin Elliston, Charles McDowall, Rich. D. Spaight, Wm. J. Dawson, Jas. Porterfield, Wm. Barry Grove, Geo. Elliot, Wallis Styron, Wm. Shepperd, Carteret, James Phillips, John Humphries, Mich. Payne, Charles Johnson, Stephen Cabarrns, Edmund Blount, Chowan Henry Abbot, Isaac Gregory, Peter Dauge, Charles Grandy, Enoch Sawyer, George Lucas, John Willis, John Cade, Elias Barnes, Neil Brown, James Winchester, Wm. Stokes, Thomas Stewart, Josiah Collins, Thos. Hines, Nat. Jones, John Steele, Wm. R. Davie, Joseph Reddick, James Gregory, Thomas Hunter, Gates, Thomas Wynes, Abraham Jones, John Eborne, James Jasper, Caleb Foreman, Seth Hovey, John Sloan, John Moore, Wm. Maclaine, Nathan Mayo, Wm. Slade, Wm. McKinzie, Robert Irwin, John Lane, Thomas Reading, Edward Everegain, Enoch Relfe, Devotion Davis, Wm. Skinner, Joshua Skinner, Thomas Harvey, John Skinner, Samuel Harrel, Joseph Leech, Wm. Bridges, Wm. Burden, Edmund Blount, Tyrrel Simeon Spruil, David Tanner, Whitm. Hill, Benjamin Smith, John Sitgreaves, Nathl. Allen, Thomas Owen, George Wyny, David Pirkins, Joseph Ferebee, Wm. Ferebee, and Wm. Baker.

Extract from the Journal, J. HUNT, Sec'ry.